—IN THE—

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

STATE OF MISSOURI, DEFENDANT IN ERROR.

VS.

GEORGE THOMPSON, PLAINTIFF IN ERROR.

STATEMENT.

At the October term, 1894, of the St. Louis Criminal Court, defendant was indicted for the murder in the first degree of J. M. Cunningham, sexton of St. Peter's Episcopal church in the city of St. Louis. He was charged with administering strychnine in cheese to said Cunningham. Cunningham was a man 32 years old, in good health, and was sexton of St. Peter's church, which was located on the corner of Lindell and Spring avenues, St. Louis. He had been sexton since Christmas, 1893. Prior to his employment, the defendant, George Thompson, was sexton of said church. After deceased took charge of the church the defendant sometimes assisted him in his duties. The deceased was married and lived at Clayton, St. Louis county. During the week of his death the deceased brought some mushrooms to a Mrs. McLean, who lived in the city. On Saturday morning, September 29, he left his home at Clayton well and hearty. On this date F. S. Beckett was

the organist of St. Peter's church in St. Louis. On September 29, 1894, Beckett, as organist, went to St. Peter's church to practice for the next day's service, reaching the church at two o'clock p. m. Cunningham, the sexton, was then working on the lawn. Beckett, the organist, went into the church, remained a few minutes, then left and made two or three calls and returned about four o'clock p. m. and began to practice. Cunningham, the deceased, was still sprinkling the lawn. Twenty or thirty minutes after the return of Beckett to the church the deceased told him he had a lunch, and asked if he would help eat it. He said he would, and deceased said he would go into the church and spread it out. When the deceased came in from the lawn he called the organist, and together they went to the cellar of the church. In the lunch was a bottle of beer and a glass. Deceased poured Beckett a glass of beer, and Beckett drank it, and they both ate cheese and crackers, and the organist ate a charlotte russe and a pear. The deceased sexton ate heartily of the cheese and crackers. The organist ate only a small portion of the cheese and crackers, as compared with the amount deceased ate.

The organist said the cheese tasted bitter, and the deceased sexton remarked that it was bitter. The organist did not feel any bad effect until he went upstairs. Beckett left deceased before the latter had finished eating. Beckett testified: "I went up and I felt rather sick at first, dizzy, as I was practicing the organ, but I thought it would work off, and then I had cramps and a sort of stiffening. Then I tried to walk out and at first I could not walk at all, and then I relaxed; I went out all right and then I had pains in the back, and lockjaw, and something of that kind all the time. The deceased came back as I was practicing the organ and said there must have been something the matter with that cheese or the lunch. He said he felt quite sick. We compared notes and found that we both felt the same."

The organist Beckett then started after the doctor, or something, and testified: "And I had trouble in getting out; I could not." Deceased said he had a great many pains. We both called for somebody and some man ran up. The deceased called for help repeatedly. In a few minutes Dr. Love came, and during these few minutes the deceased, Cunningham, at first had convulsions, and then he got perfectly quiet after that and didn't move a muscle. The physician administered antidotes to witness. The witness, Beckett, identified the basket and the articles of glassware that the lunch came in.

Beckett also testified that deceased drank a glass of beer. Beckett also testified that he discovered no bad taste about any of the lunch but the cheese.

Peter Waitz testified he worked at 3700 Lindell avenue. That right across from where he worked was St. Peter's church. Witness worked for Mr. Mansur; witness knew the defendant; defendant had been sexton of St. Peter's church when it was on Grand avenue; witness knew the deceased; had known deceased eight years. On evening of September 29, 1894, witness saw defendant and deceased about 2:15 or 2:30 p. m. standing on the wood-work that goes in the back of the church talking to each other; they were just the width of the street from witness; deceased had been washing the sidewalk and was dressed in his working clothes; defendant had on a blue working jacket and a white straw hat; about 4 o'clock the same afternoon witness heard the cry for help from the church and then heard it repeated; witness went over to the church and was the first person that reached deceased; he found deceased already speechless and dying, and Beckett, the organist, unable to speak.

Witness identified the basket and glasses, and testified that the bottle had Anheuser-Busch trade mark on it.

Hiram Stemberg, testified he knew defendant. Defendant had been sexton of St. Peter's church, and witness was a member of the choir until Easter, 1894. Defendant ceased to be sexton about the first of 1894. Sometime in February, 1894, defendant met witness near the old church on Grand avenue and Olive street, right across from Beers' hotel. They spoke and defendant had a bottle that he offered to the witness to give to Cunningham. Defendant said it was blackberry brandy and whisky. Defendant said deceased gave him, defendant, a mixture of that kind, and it made him drunk, and that caused him to lose his place as sexton. Witness took the bottle. It contained a liquid. Witness told defendant he would take it. Witness went back of the church and broke the bottle on a rock. This was Sunday night. The next Wednesday night after the rehearsal he met defendant again across the street from the church. He called to witness and asked him if he gave Cunningham the bottle, and witness told him yes; that defendant then called witness a liar, and said: "If you had given him that bottle to drink, but I know you did not, he would be drunk for a week." About the time defendant gave witness the bottle, defendant was working at Mrs. Gordon's on Westminster Place, and he said he was also doing chores for the Rev. Dr. Short. He made the fires in the furnace and blacked Dr. Short's shoes.

Sarah Dito testified she was a domestic servant in the employ of Mr. Thos. McLean, 3708 Pine St. At the time of the poisoning of Cunningham, defendant was employed by Mr. McLean and Rev. Dr. Short, rector of St. Peter's church, to do the yard work. Witness

testified that on Tuesday, about two weeks before the poisoning of deceased, defendant brought a basket of mush-rooms to Mrs. McLean, and on Tuesday before his death deceased also brought some mush-rooms to Mrs. McLean. Mrs. McLean was absent, but deceased left them for her. The defendant was sitting in the laundry where witness was ironing, and saw the mush-rooms, and deceased asked defendant if Dr. Short liked mush-rooms, and defendant said he did not know.

George Davis, coachman for Mr. A. Cole, testified that he knew defendant. That in July previous to the poisoning the defendant came to where witness was scrubbing the sidewalk. Witness was deeply interested in the welfare of one Duncan, and witness gave defendant a newspaper and said, "Look over the paper and see how Davis stands." Defendant read the paper, and after he got through, he said, "I have been down town today on a little errand, and I got defeated in what I was going to do." When asked how, defendant said, "I went down to the drug store; aimed to get some strychnine." Defendant then said, "You are well acquainted down there; couldn't you do that for me?" Witness said no. Witness also stated to defendant that defendant had better let that alone; that defendant would get himself into trouble. Witness then asked defendant what he wanted with the strychnine, and defendant said he was going to poison a dog. The defendant said the dog had bit some little girls where he worked, and he wanted to poison the dog and not let the boss know how it got killed, and if it died around the house he would not know anything about it. Defendant said he was working either at McLean's or Dr. Short's, but witness could not remember which. About a week before this defendant told witness that he, the defendant, had been beaten out of his job, and did not like it. On the evening of the poisoning witness met defendant near six o'clock, and stopped him and said, "That is too bad; two gentlemen were poisoned at the church, and one was dead and the other nearly so." The defendant merely answered yes, and walked on. Usually defendant had stopped and talked to witness.

Dr. C. A. Frank testified that the death of deceased was caused by poison; that witness took out the stomach, liver, brain and kidneys, placed them in hermetically sealed jar, and turned them over to the coroner.

I. N. Love testified he turned over the hermetically sealed jar, together with peace of cheese received by him from the police department, to C. R. Sanger, professor of chemistry of Washington University.

Prof. Sanger testified to receiving the jar and contents. The professor subjected the cheese and the contents of the stomach to five

different tests during a period of three weeks, and discovered in the piece of cheese, weighing five-sixths of an ounce, a proportion of three-tenths of a grain of strychnine to the ounce. The chemist's analysis revealed strychnine in sufficient quantity in the stomach of deceased to account for death by that poison.

Dr. I. N. Love testified that all indications in Beckett's, the organist, case, pointed to strychnine poison. Witness had not a shadow of a doubt on that subject. Witness also testified to seeing a basket and the remains of a lunch there, and that he directed some one to take charge of it and turn it over to the police.

John Berry, a policeman, testified that St. Peter's church was on his beat; that he went to the church about 5 o'clock the evening of the poisoning; that witness gathered up the fragments of the lunch and basket and bottle and brought them to the police office of the Fifth district. Witness identified the articles in evidence as the same ones.

E. Schmidt, a grocer at No. 3562 Olive St., testified that his store was two blocks from St. Peter's church; that he knew Dr. Short, rector of the church, and remembered the occurrence of the poisoning. Witness had known defendant two or three years at that time. About noon of the day deceased was poisoned defendant came to witness' store and asked the price of a bottle of beer. Defendant said he needed only a single bottle. Witness told defendant the price was ten cents a bottle, or three for a quarter. Defendant left for a little while. Defendant studied about it a while and came back in a few minutes and said he, the defendant, wanted a bottle of beer. Witness asked him what kind. Defendant said the same kind that Mrs. Rev. Dr. Short gets. Witness told defendant that he did not know what kind Mrs. Short had been getting. Defendant said she got her beer at this store. Witness told defendant she had not been trading there, and hence witness did not know what kind defendant wanted. Defendant then said Anheuser-Busch. The grocer gave him a pint bottle of dark Anheuser-Busch beer, and defendant handed him a quarter and witness gave defendant fifteen cents in change and defendant went out. Defendant appeared to be excited or confused; did not seem to know what he wanted to say. Witness identified the bottle in evidence as the kind of bottle witness sold defendant, but said the bottle he sold him had a rubber cork when witness sold it to defendant. Witness identified the prisoner as the purchaser of the beer beyond any question.

Lee Ruchersfelt testified he was a druggist at No. 3695 Laclede avenue, two blocks from St. Peter's church. That on the 26th of Sep-

tember, 1894, three days before the poisoning, witness received a written order purporting to come for Dr. Keber, for a drachm of sulphate of strychnine; the order was brought by a negro man; witness could not say that he had ever seen the negro since; witness believed the order to be genuine and he gave the negro the drachm of strychnine for Dr. Keber; there were 45 or 50 fatal doses in the amount the negro purchased; witness testified he did not know Dr. Keber personally, but knew there was such a physician on Pine street; witness marked the order "9 | 26 | 94," and signed his own name thereon; witness delivered this order to Mr. Gocking, a detective, the Monday following the poisoning. This witness identified paper offered in evidence as the order presented to him, and on which he sold the strychnine to the negro who came for it.

Dr. Keber testified he had resided at No. 3832 Pine street, seven years. He pronounced the order a forgery of his name. He never gave it or authorized it. He had no negro man in his service. Witness did not know defendant Thompson.

Nettie Simon testified that she worked at Grand Avenue Bakery on Grand avenue and Olive street. That witness remembered the poisoning of Mr. Cunningham, the sexton; heard of it the day it happened. About noon of that day, Saturday, she sold two charlotte russe to a negro man. The negro man threw down a dime and went out in a hurry. Witness sold a dozen charlotte russe to a lady that afternoon about 5 o'clock, and that was all she sold that day of charlotte russe. Witness identified the paper in the basket as of the kind in which she put up the charlotte russe she sold to the negro man, and the box.

Joseph Gocking, special police officer, testified he was detailed on this case about 6:30 the evening of the poisoning with Officer Harrington. They received the basket and remnants of the lunch that evening and locked them up, and they have remained locked up ever since, except a part of the cheese furnished Prof. Sanger for analysis. Witness found a paper and a piece of charlotte russe sticking to it in the furnace in the basement of the church. Witness arrested defendant. Defendant said that night he was arrested he had not bought any crackers or beer. Next day defendant admitted he had, but gave them to a friend that was going away. Witness identified the letters marked "B" and "C" and the order on Ruchersfelt. Witness also identified a blue jumper shirt and a hat, which was found and took in the basement of Dr. Short's residence. Witness said defendant told him where he could find it.

Michael O'Malley testified he was a member and a captain in the police force of St. Louis, and had been for twenty years; was captain in the Fifth District in September, 1894; St. Peter's church was in his district. Witness saw defendant write a letter to Mr. Beckett, the organist. The letter witness mentions is known in the record as Exhibit "E," and the envelope as Exhibit "F." Witness also saw defendant write a note, marked and known in the record as Exhibit "G," to Rev. Dr. Short; also one to Charity Thomson, 3718 Morgan street. This latter letter was marked Exhibit "I" and the envelope "H," and so known in the record. Witness had a conversation with defendant, in which he denied being around St. Peter's church the day of the poisoning, but finally said he, defendant, saw Cunningham about 4:30 sprinkling the lawn. The prisoner denied in toto the story about his being present at McLean's when deceased brought her some mushrooms. Defendant said he didn't know what mushrooms were and never saw any.

Upon cross-examination, this witness, O'Malley, stated that when he learned of the anonymous letter written Cunningham he said I will go and get his hand-writing, so as to compare it with this letter; and witness took the defendant some paper and told defendant to write a letter. Defendant said he wrote one to Dr. Short. Witness asked defendant who he wanted to write to. Defendant said to Dr. Short and to his wife, and witness gave defendant paper and defendant wrote these letters. Witness stated that he went to get defendant's handwriting to compare with the anonymous letter. The superscription on the envelope to Mr. Beckett was in these words, Exhibit "E":

"Mr. Beckett,
"Organist,"
"St. Peter's Church,
"Lindell & Spring Ave."

The letter to Mr. Beckett, excepting the printing, was in these words:

(Exhibit "F.")

"Office of Police District,
"St. Louis, Oct. 1st, 1894.

"Mr. Beckett me dear sir i know of no one having no ill feeling towards you or mr. cunningham nor I dont know anything about the basket an I dont know who brought the basket to the church.

(Signed) GEO. THOMPSON."

The letter to Dr. Short, Exhibit "G," was in pencil, as follows:

"Dr dear sir will you come to see me at once as i am anxious to see you.

Your obedient servant,
GEO. THOMPSON."

Addressed, "Rev. Wm. Short,
3694 West Pine St."

The letter directed to Charity Thompson, exhibits "H" and "I," was directed:

"Charity Thompson,
3718 Morgan St.,
City."

And in these words:

"Oct. 1st, 1894.

Charity i hope you are doing well you may come to see me at once if you like to an thinks it not too early for you to come out i wants to see you verry bad i wants to see you mr. whitiour and edd goodloe at once edd hawkins also charlie and mr. woods you may bring me something to eat if you like to they are not starving me to death out here.

GEORGE THOMPSON."

"Charity dear wife. i i hope you are getting well. i also hope you are not in grief. mr short will come to see me at once i hope, i hope baby is well an not so fretful as has ben i were so afraid you would try to come to see me today an make yourself sick remember me in Prayer for my trust is in the Lord. Mr. and Mrs. rev Short has ben to see you i guess and so has mrs mclean never did I think that i would come to be locked in Prison but i am inocent an tries to make myself satisfied good by Georg Thompson Charity Thompson, 3718 Morgan."

Exhibit "A" was in these words:

"Please send by bearer 1 ʒ (1 dram) of strychnine, and oblige,

"Dr. Kebber, 3832 Pine St."

Exhibit "B" was in these words:

"Beckard, Choir Master, St. Peter's church, Lindell and Spring ave." Postmarked, "St. Louis, Aug. 2, 11 p. m., '94."

Exhibit "C" was as follows:

"Aug. 2nd, 1894.

My dear Beckard i am sorry o sorry indeed to say to you that the music commite is so dissatisfied with you undertaking to play their grand new organ as they call it as a friend to you i must say that there will most certainly be a change made some are saying you knows nothing about playing an organ while a balance says you can't even play a piana i felt so bad over this felt it my duty to give you an understanding of what they are going to do now i must say to you of that i know you have a finer choir in st peters church now than ever she were known to have i have heard men who know all about music say that they would not wish a better organist and the training of your choir

they have have said to me were magnificent Beckard you are not an organ maker to suit evy ones preferance to to the sound of the organ so if i were you i would let them persue their coarse for all you may do now will be counted nothing i have worried with this committee time anagain asking them to be contented saying saying to them that we can not get a more faithful worker than you are their reply were you know nothing some replied you knew too much about music and not enough about farming some saying they had heard enough of your smart talk the first beginning of all this rumor came from that low irish Joe the sexton there of the church 3 or 4 of the gentlemen of the music committee came in the church quite a good while ago. or asked had or did you do any practiceing so he spoke up an said you were tramping around in the church the best part of your time an one half of your time you had someone to teach you how to play the organ an it soon reached the committee an from one word to another they said Joe were about right an were sensible to notice such a thing an not long since he told some one of the vestry agretdeal you should said about no one in st peters church should not impose on you an you did not care whether you played the organ right or wrong for you got no credit either way thought the transactions of our business i have found that Joe both a tadling liear an hypocrit will have a good talk with you after the next meeting will also come verry near getting rid of mr Joe should be attending to the cleaning of the church and the yard it would not look so much like a pastor for cattle or some place for rent instead of seeing after your business Yours Resp will not give name but will see farther i will make efford to get rid of mr. Joe for his interfering."

W. L. Fitzgerald, then qualified as an expert on handwriting, and shown all of said exhibits and requested to compare exhibits "B" and "C" above with exhibits "F," "G," "H" and "I," and to state if they were in the same handwriting. He gave his opinion that they were. Exhibit "A" with exhibit "G," and he testified that they were written by the same party.

Thereupon the State offered all of said exhibits, letters, envelopes and notes in evidence, to the introduction of which, in evidence, the defendant, by his counsel, objected; first, because the inclosure shows that exhibits "E," "F," "G," "H" and "I" were obtained by fraud and deceit after the defendant had been arrested and incarcerated, and were obtained for the purpose of showing them in evidence against the defendant, and for the purpose of compelling him to manufacture evidence against himself; second, that they were objected to because the exhibits "E," "F," "G," "H" and "I" are not in any way connected with the case, but are wholly irrelevant writings attempted to

be introduced for the purpose of comparison. There being no statute in this State providing for the admission of handwriting for the purpose of comparison, the Supreme Court has uniformly followed the rule of common law, the general rule of which is that handwritings are inadmissible for the purpose of comparison, this general rule admitting of two exceptions, viz.: writings already in the case for some other purpose than that of comparison, and when the party it estopped to deny their genuineness or admit their genuineness in open court.

Which objection the Court overruled and admitted all of said exhibits in connection with the evidence of said Fitzgerald; to which ruling defendant at the time, by counsel, duly excepted.

Rev. Dr. Short testified defendant's reputation was good prior to this charge. Witness corroberated the other witnesses as to the blue jacket of defendant found at his house, the identification of the dishes and to requesting the officers to preserve the remnants of the lunch; witness also testified that Mrs. McLean was a member of his church, and that defendant was discharged because the vestry preferred a white man for sexten when they moved to the new church and Cunningham took defendant's place.

Miss Susan Knox Gordon testified the defendant's general reputation was good for two years before she employed him at her residence in February, 1894.

Thomas H. Smith, formerly choir master of St. Peter's church, testified to the good character of defendant.

P. B. Pitman, barber, at 3406 Olive St., testified to good character of defendant and bad reputation of Davis, witness for the State.

Charles Thompson, waiter at West End Hotel, cousin of defendant, likewise testified to good reputation of defendant and bad reputation of witness George Davis.

Defendant testified that he lived at 3718 Morgan, and on the morning of September 29, 1894, he left his home about 6 o'clock and went to the residence of Rev. Dr. Wm. Short, rector of St. Peter's church; that he, the defendant, remained there until 8:30 that morning; from Dr. Short's defendant testified he went directly to the residence of Mrs. Thomas McLean and remained there at work until a quarter past twelve. That he went home to lunch and returned to Dr. Short's about 2 or 2:15 p. m. and was at Dr. Short's continuously until a quarter to five o'clock that evening. That in going home for lunch he, defendant, past St. Peter's church going on Spring Avenue, and going back he also passed the church.

This cause was submitted at the March term, 1895, of the Criminal

Court of the city of St. Louis, and on March 27, 1895, the jury returned a verdict, finding defendant guilty of murder in the first degree.

Defendant being duly sentenced in accord with such verdict, was in proper time and manner granted an appeal to the Supreme Court of Missouri, and on February 4, 1896, the case was reversed and remanded for the error of the trial court committed in admitting the letters written by defendant while in jail to his wife, the organist and Rev. Dr. Short, as they were offered for the sole pupose of furnishing specimens of defendant's handwriting, and thus furnishing a basis for comparison thereof with the order for the poison and the threats against the deceased sexton.

Between the date of the trial, the 22nd of March, 1895, and the decision of the case on the 4th day of February, 1896, the Legislature of Missouri added a new section to chapter 173 of the Revised Statutes of 1889, to be known as section 8944*a*, which will be found on page 284, Session Acts of Missouri for year 1895, and which section is as follows:

Section 1. A new section is hereby added to chapter 173, R. S. 1889, of this State to be numbered as section 8944*a*, and to read as follows:

Section 8944*a*. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute.

This law became operative under the Constitution of Missouri in July, 1895. The case came on for the second hearing May 25, 1896, and was concluded May 29, 1896, and on the said May 29, 1896, a verdict was rendered finding defendant guilty as charged. Under the provisions of this statute passed in 1895, and operative at the time of the second trial, the trial court admitted the letters written by defendant above mentioned, and admitted them for the purpose of furnishing specimens of defendant's handwriting, and thus furnishing a basis for comparison thereof with the order for the poison, and the threats against the sexton.

Within four days after said verdict defendant filed a motion for a new trial, which was on July 21st, it yet being the May term of said court, overruled, and on July 23, 1896, defendant filed his motion in arrest of judgment, which was by the Court overruled on July 27th, and after sentence had been passed, a second appeal was granted to the Supreme Court of Missouri. On November 16, 1897, the Supreme

Court rendered an opinion affirming the judgment of the trial court, Chief Justice Barclay and Judge Sherwood dissenting.

In due time and in the proper manner a motion for a rehearing was filed, which motion was by the Court overruled. And afterwards, on January 5, 1898, a writ of error was granted to this Court.

It was conceded in the argument of this case that if the act of 1895 (see session laws of Missouri, 1895, p. 284), is constitutional and applies to this case which was pending at the time the law was passed, no error occurred in admitting the letters; but counsel for defendant earnestly contends that if this act is to be construed so as to admit this evidence in this case it is unconstitutional, because it is a violation of article I, section 10 of the Constitution of the United States, and article II, section 15 of the Constitution of Missouri, of 1875, which forbid the passage of an *ex post facto* law.

The defendant assigns as error, first, the admissions in evidence for the purpose of comparison certain extraneous handwritings under the provision of section 8944*a*, session laws of Missouri, 1895, because the said act was passed after the arrest, indictment and trial of defendant and is in violation of article I, section 10 of the Constitution of the United States; second, that it was error to admit in evidence for the purpose of comparison certain extraneous handwritings under section 8944*a*, session laws of Missouri, 1895, because the same was in violation of article II, section 15, Constitution of Missouri, and in violation of sections 6954, 6957 and 6958, R. S. Mo., 1889.

These are the two propositions that are submitted to this Court for consideration.

BRIEF.

The law of 1895, (see Acts of Mo. of 1895, p. 284) making the notes written by defendant while in jail and proved to be genuine and competent for the purpose of comparison with the disputed writing, to wit: The forged order to the druggist for strychnine, is not an *ex post facto* law in its relation to this case.

State vs. Thompson, 42 Southwestern Reporter, p. 949.

Hopt vs. Utah, 110 U. S. Rep. 574.

O'Bryan vs. Allen et al., 108 Mo. 227.

State vs. Jackson, 80 Mo. 175.

Cooley on Constitutional Limitations, 3 Ed., 367.

Hope Mutual Ins. Co. vs. Flynn, 38 Mo. 483.

The common law rule was in force in Missouri prior to the enactment of the statute of 1895, relative to comparison of handwritings, announcing the principle that writings were not admissible for comparison with a disputed writing, unless they were in evidence and admitted to be genuine or the party was estopped to deny their genuineness.

State vs. Thompson, 132 Mo. 301.

The order to the druggist was, however, always competent evidence against the defendant, *provided* it was proved *to be genuine* and his handwriting.

The order was already evidence whenever it was shown to be in the handwriting of the defendant, even before the law of 1895 was passed.

The only thing the law of 1895 did was to provide an additional method by which it might be shown that the order was written by the defendant.

The notes offered in evidence for the purpose of comparison were simply permitted as evidence before the jury.

The similarity of the disputed order to the druggist and the right to attack these notes themselves is open to the defendant and his counsel.

These notes were offered solely as a means of arriving at an ultimate fact.

This law of 1895 relates solely to the procedure, and the rule is that remedies and procedure must always be under the control of the Legislature.

Cooley on Constitutional Limitations (5 Ed.), p. 329.

In 110 U. S. Rep., p. 574, the question arose in this way: By the laws of Utah persons, against whom judgment had been rendered upon conviction of felony, unless pardoned by the Governor or such judgment had been reversed on appeal, should not be witnesses. Compiled Laws of Utah (1876) Sec. 378, p. 506.

After the date of the alleged homicide, but prior to the time the defendant was put upon trial, an act of the Legislature was passed which repealed said section 378 and made such convicted persons competent witnesses.

One Emerson, convicted of a felony theretofore, was offered as a witness against Hopt, and defendant objected to his competency, and the objection was overruled.

On appeal to this Court it was held that no constitutional right of defendant was invaded by this statute, and that it was not "*ex post facto*" in its application to the prosecution of the defendant.

It is difficult to understand how opening new sources of light or increasing the means of proving or detecting crime can be said to require less evidence or become *ex post facto*.

Laws which change the rules of evidence relate to the remedy only, and may be applied to existing causes of action without infringing the constitutional guarantees against "*ex post facto*" legislation.

O'Bryan vs. Allen, 108 Mo. 227.

Laughlin vs. Commonwealth, 13 Bush. 261.

Munnier vs. McCray, 113 Mo. 382.

Mrous vs. State (Texas), 21 Southwestern Reporter, 764.

The Court has said: "Alterations, which do not increase the punishment nor change the ingredients of the offense or the ultimate facts necessary to guilt, but leaving untouched the nature of the crime, and the amount or degree of the proof essential to conviction, only remove existing restrictions upon certain classes of persons as witnesses,

relate to modes of procedure only, in which no one can be said to have a vested right and which the State, upon grounds of public policy may regulate at pleasure.

"Such regulations of the mode in which the facts constituting guilt may be placed before the jury, can be made applicable to prosecutions or trials thereafter had, without reference to the date of the commission of the offense charged."

Hopt vs. Utah, 110 U. S. 574.

Defendant has been twice tried and twice found guilty by a jury, of murder by poison, and we insist that in his trials no constitutional right of his has been in any way invaded, but he has a trial by the forms of law constitutionally administered, by an impartial court, and this is all any one can legally have.

EDWARD C. CROW, ATT'Y-GENL,
For Respondent.